

**Letter of Findings: 01-20190085
Individual Income Tax
For the Year 2016**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

By providing W-2G withholding returns issued by Indiana casinos, Out-of-State Resident provided sufficient contemporaneous documentation establishing that he was entitled to claim an Indiana income tax credit for tax withheld on his behalf by Indiana casinos.

ISSUE

I. Individual Income Tax - W2-G Withholding Credits.

Authority: IC § 6-3-1-3.5(a); IC § 6-3-2-1(a); IC § 6-3-2-2(a); IC § 6-8.1-5-1(c); I.R.C. § 62; *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department erred in assessing him additional Indiana income tax because the Department failed to grant Taxpayer credit for Indiana income tax withheld on his behalf.

STATEMENT OF FACTS

Taxpayer is an out-of-state resident who timely filed a 2016 Indiana income tax return reporting income he received within the state. In November 2018, Taxpayer filed an amended 2016 Indiana return. The amended Indiana return claimed approximately \$21,000 in withholding tax credits. When Taxpayer filed the amended return, Taxpayer included a three-page spread sheet summarizing the amount withheld on his W-2G winnings statements.

The Indiana Department of Revenue ("Department") did not allow the \$21,000 in W-2G withholding credits claimed on his amended return. The denial of the credit resulted in an assessment of additional tax.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - W2-G Withholding Credits.

DISCUSSION

The issue is whether Taxpayer has presented sufficient, contemporaneous, documentary evidence establishing that Indiana casinos withheld approximately \$21,000 on his gambling winnings. The Department disallowed the \$21,000 credit which Indiana casinos withheld on Taxpayer's 2016 gambling winnings.

Taxpayer argues that the Department erred in disallowing the \$21,000 credit claimed on his amended 2016 Indiana income tax return.

As a threshold issue, it is the Taxpayer's responsibility to establish that the interest, penalty, and tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v.*

Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Thus, any taxpayer challenging an assessment is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

Indiana imposes a tax "upon the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. In computing what is considered a taxpayer's Indiana income tax, IC § 6-3-1-3.5(a) refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) states that - with certain modifications specific to Indiana law - I.R.C. § 62 defines "adjusted gross income" for Indiana taxpayers.

Taxpayer originally submitted a W-2G casino spreadsheet outlining amounts withheld on his gambling earnings. Taxpayer's spreadsheet qualifies, of course, as secondary information. Subsequent to the administrative hearing, Taxpayer submitted copies of the original W-2G winnings statements.

The Department agrees that Taxpayer has met his burden under IC § 6-8.1-5-1(c) of establishing that the assessment was "wrong" and that the amount of tax - or refund due - should now be reexamined. Taxpayer has provided documentary evidence that he was entitled to claim withholding credits.

HOLDING

To the extent that the W-2G winnings statements verify the actual amount of withholding credits claimed, Taxpayer's protest is sustained.

March 29, 2019

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